

Pro Se 1 (Rev. 12/16) Complaint for a Civil Case

United States Courts
Southern District of Texas
FILED

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

OCT 28 2021

Nathan Oehsner, Clerk of Court

____ Division

Sheldon Wallace

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Lending Club

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Case No. _____

(to be filled in by the Clerk's Office)

Jury Trial: (check one) ☒ Yes ☐ No

COMPLAINT FOR A CIVIL CASE

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Sheldon Wallace

Street Address

801 Dellwood St # 337

City and County

Bryan, Brazos County

State and Zip Code

Texas 77802

Telephone Number

979-324-2635

E-mail Address

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Pro Se 1 (Rev. 12/16) Complaint for a Civil Case

Defendant No. 1

Name Lending Club
Job or Title (if known) _____
Street Address 71 Stevenson St #300
City and County San Francisco, San Francisco County
State and Zip Code California 94105-2985
Telephone Number 888-596-3157
E-mail Address (if known) support@lendingclub.com

Defendant No. 2

Name _____
Job or Title (if known) _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address (if known) _____

Defendant No. 3

Name _____
Job or Title (if known) _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address (if known) _____

Defendant No. 4

Name _____
Job or Title (if known) _____
Street Address _____
City and County _____
State and Zip Code _____
Telephone Number _____
E-mail Address (if known) _____

II. Basis for Jurisdiction

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? *(check all that apply)*



Federal question



Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

T.C.P.A. (Telephone Consumer Protection Act)

B. If the Basis for Jurisdiction Is Diversity of Citizenship**1. The Plaintiff(s)****a. If the plaintiff is an individual**

The plaintiff, *(name)* _____, is a citizen of the
State of *(name)* _____.

b. If the plaintiff is a corporation

The plaintiff, *(name)* _____, is incorporated
under the laws of the State of *(name)* _____,
and has its principal place of business in the State of *(name)* _____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)**a. If the defendant is an individual**

The defendant, *(name)* _____, is a citizen of
the State of *(name)* _____. Or is a citizen of
(foreign nation) _____.

b. If the defendant is a corporation

The defendant, (name) _____, is incorporated under the laws of the State of (name) _____, and has its principal place of business in the State of (name) _____.

Or is incorporated under the laws of (foreign nation) _____, and has its principal place of business in (name) _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because (explain):

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

Plaintiff asked the defendant to stop calling and leaving messages. After the defendant was asked to stop calling, they were on notice that any applicable consent, if any ever existed, was revoked. The defendant showed disregard for the plaintiff's rights under law with the purpose of harassing plaintiff.

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

- 1) injunction relief pursuant 47 U.S.C section 227(b)(3)
- 2) statutory damages of \$500.00 per telephone call in violation of the T.C.P.A, pursuant 47 U.S.C section 227(c)(5)(B) and 227(c)(5)(C)
- 3) Treble damages of \$1,500.00 for each call in violation of the T.C.P.A pursuant to 47 U.S.C section 227(c)(5)(B) and 227(c)(5)(C)

Statement of Claim

Sheldon Wallace (plaintiff) alleges the following against Lending Club :

1. Plaintiff's complaint is based on the Telephone Consumer Protection Act 47 U.S.C. section 227, et seq. (TCPA)
2. Jurisdiction of this court arises pursuant to 28 U.S.C. section 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States. See *Mins v. Arrow Fin. Services, LLC*, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).
3. Defendant conducts business in the state of Texas and as such, personal jurisdiction is established.
4. Venue is proper pursuant to 28 U.S.C. section 139(b)(2). PARTIES
5. Plaintiff is a natural person residing in Texas.
6. Plaintiff is a "person" as that term is defined by 47 U.S.C. section 153(39).
7. Defendant is a company with its headquarters located at 71 Stevenson St #300, San Francisco, CA 94105-2985.
8. Defendant is a "person" as that term is defined by 47 U.S.C. section 153(39).
9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers.
10. Plaintiff has a cellular telephone number.
11. Plaintiff only used this number as a cellular telephone number.
12. Defendant placed repeated harassing telephone calls to plaintiff on his cellular telephone.
13. When contacting plaintiff on his cellular telephone, Defendant used an automatic telephone dialing system, automated messages, and/or a pre-recorded voice.
14. Defendant's calls to plaintiff's cellular telephone would usually begin with a pre-recorded voice or a noticeable delay before plaintiff was transferred to a live agent or the call terminated.
15. Plaintiff also received automated voicemails from Defendant.
16. Defendant's telephone calls to plaintiff's cellular telephone were not made for "emergency purposes."
17. Shortly after calls began, Plaintiff demanded that Defendant stop placing calls to his cellular telephone thereby revoking any consent that Defendant may or may not have thought it had to call him.

Violation of 15 U.S.C. 1692, (a)(1)

18. Once Defendant was aware its calls were unwanted, any further calls could only have been for the purpose of harassment.

19. Plaintiff found the Defendant's repeated calls upsetting, harassing, aggravating, annoying, frustrating, and invasive. The plaintiff's phone records show the defendant called the plaintiff 179 times from six different phone numbers.

COUNT I DEFENDANT VIOLATED THE TCPA

20. Plaintiff incorporates the foregoing paragraphs as though the same were set forth at length herein.

21. Defendant initiated multiple automated telephone calls to Plaintiff's cellular telephone using a pre-recorded voice.

22. Defendant initiated automated calls to Plaintiff using an automated telephone dialing system.

23. Defendant's calls to Plaintiff were not made for emergency purposes, but rather were placed in its attempt to collect an alleged account balance owed by Plaintiff.

24. After Plaintiff told Defendant to stop calling, Defendant was on notice that any applicable consent, if any ever existed, was revoked.

25. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton, and negligent disregard for plaintiff's rights under the law and with the purpose of harassing Plaintiff.

26. The acts and/or omissions of the Defendant were done unfairly, unlawfully, intentionally, deceptively, and fraudulently and absent lawful right, legal defense, legal justification, or legal excuse.

27. As a result of the above violation of the TCPA, Plaintiff has suffered the loss and damages set forth above entitling Plaintiff to an award of statutory, actual, and treble damages. WHEREFORE, Plaintiff, Sheldon Wallace, respectfully prays for a judgment as follows:

a. All actual damages suffered pursuant to 47 U.S.C. section 227(b)(3)(A);

b. Statutory damages of \$500.00 per telephone call in violation of the TCPA, pursuant to 47 U.S.C. section 227(b)(3)(B);

c. Treble damages of \$1,500.00 for each call in violation of the TCPA, pursuant to 47 U.S.C. section 227(c)(5)(B) and 227(c)(5)(C);

d. Injunctive relief pursuant to 47 U.S.C. section 227(b)(3); and

e. Any other relief deemed appropriate by this Honorable Court.

Injuries

Defendant's abusive debt collecting practices triggered the plaintiff's depression and anxiety which he has clinically been diagnosed for. Defendant caused emotional distress. Defendant called 179 times after plaintiff asked them to stop.

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 10/20/2021

Signature of Plaintiff

Printed Name of Plaintiff

Sheldon Walker
Sheldon Walker

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address